STATE OF NEW YORK

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9028--A

IN ASSEMBLY

January 21, 2022
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Introduced by M. of A. VANEL -- read once and referred to the Committee
    on Science and Technology -- committee discharged, bill amended,
    ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to requiring
    certain disclosures in advertisements involving virtual tokens

    **The People of the State of New York, represented in Senate and Assem-
    bly, do enact as follows:**

1   Section 1. The general business law is amended by adding a new section
2   350-b-2 to read as follows:
3   **§ 350-b-2. Disclosures required in advertisements involving security**
4   **tokens. 1. As used in this section the following terms shall have the**
5   **following meanings:**
6   **(a) "virtual tokens" shall mean security tokens and stablecoins.**
7   **(b) "security tokens" shall mean any form of fungible and non-fungible**
8   **computer code by which all such forms of ownership of said computer code**
9   **is determined through verification of transactions or any derivative**
10 **method, and that is stored on a peer-to-peer computer network or any**
11 **other such computerized system or through any derivative means of stor-**
12 **age, and which conforms to one of the following:**
13   **(i) such class of virtual tokens are advertised by the developer or**
14 **another at the developer's direction to be bought and sold for the**
15 **purpose of profit, whether or not such purpose is advertised as the sole**
16 **purpose;**
17   **(ii) such class of virtual tokens can be reasonably understood by**
18 **members of the public to be bought and sold for the purpose of profit;**
19   **(iii) the value of such class of virtual tokens is determined by the**
20 **supply and demand of the virtual token; and**
21   **(iv) such class of virtual tokens: (i) are not pegged to an external**
22 **source, whether or not such external source is volatile, (ii) are pegged**
23 **to another class of virtual token; or (iii) such class of virtual**
24 **tokens do not employ technology which prevents large fluctuations in its**
25 **price or such technology fails to prevent the same.**
26   **(c) "stablecoin" shall mean any form of fungible and non-fungible**
27 **computer code by which all such forms of ownership of said computer code**

1 is determined through verification of transactions or any derivative
2 method, and that is stored on a peer-to-peer computer network or any
3 other such computerized system or through any derivative means of stor-
4 age, and which conforms to all of the following:
5   (i) such class of virtual tokens are not advertised by the developer
6 or another at the developer's direction to be bought and sold for the
7 purpose of profit, whether or not such purpose is advertised as the sole
8 purpose;
9   (ii) such class of virtual tokens cannot be reasonably understood by
10 members of the public to be bought and sold for the purpose of profit;
11 and
12   (iii) the value of such class of virtual tokens is not determined by
13 the supply and demand of the class of virtual token; and
14   (iv) such class of virtual tokens are pegged to an external source,
15 other than another class of virtual tokens, whether or not such external
16 source is volatile, or such class of virtual tokens do employ technology
17 which prevents large fluctuations in its price and such technology
18 succeeds in preventing the same.
19   (d) "class" shall mean a group of fungible or non-fungible tokens,
20 irrespective of the amount created, that is intended by the developer to
21 be:
22   (i) in the case of fungible tokens, valued and exchanged together; or
23   (ii) in the case of non-fungible tokens, regarded as part of the same
24 group of digital or physical items or valued together with the develop-
25 er's other non-fungible tokens based on the fact that the non-fungible
26 tokens were created by a certain developer, taking into account the
27 developer's notoriety, sale volume, and how he or she is regarded within
28 virtual token communities.
29   (e) "developer" shall mean the person or persons, whether natural or
30 otherwise, and any agent or employee thereof who either create in whole
31 or in part, maintain in whole or in part, or own more than ten percent
32 of a class of virtual tokens utilizing any technical standard and who
33 offers them for purchase in the state of New York or, where the sale of
34 their tokens in the state of New York is prohibited, such person does
35 not use reasonable efforts to prevent such virtual tokens from being
36 made available for purchase in the state of New York.
37   (f) "technical standard" shall mean the rules that a class of virtual
38 tokens shall comply with in order to use the blockchain network or any
39 derivative means thereof.
40   (g) "non-fungible token" shall mean a virtual token used to denote on
41 the blockchain ownership of any digital or physical item or any deriva-
42 tive means thereof.
43   (h) "fungible token" shall mean any virtual token stored on the block-
44 chain other than non-fungible tokens.
45   (i) "owned" and "ownership" shall mean the means by which ownership of
46 a digital asset is noted on the blockchain or any derivative means ther-
47 eof.
48   (j) "token" shall mean the technical standard used to create a fungi-
49 ble or non-fungible piece of computer code.
50   (k) "wallet" shall mean a device, program, or service which stores the
51 public and/or private keys for virtual token transactions.
52   (l) "blockchain" shall mean any type of technology which stores code
53 on a database of which said database represents the record of trans-
54 actions that make up virtual tokens or any derivative technology.
55   (m) "private key" shall mean the unique identifier of a wallet, or any
56 substantially similar analogue, that is paired with a publicly available

1 identifier and associated with an algorithm that is necessary to carry
2 out an encryption or decryption required to execute a transaction.
3   (n) "advertisement" shall mean and include but not be limited to any
4 public notice, circular, advertisement, newspaper, article, letter,
5 investment service, or communication to more than one person whether
6 directly or indirectly.
7   2. It shall be unlawful for any person, whether natural or otherwise,
8 or any agent or employee thereof to give publicity to or circulate any
9 advertisement, which, though not purporting to offer a class of security
10 tokens for sale, describes such class of security tokens that are
11 created by a developer seeking such advertisement for consideration,
12 whether directly or indirectly, without fully disclosing the receipt,
13 whether past or prospective, of the amount thereof, and whether such
14 consideration is made directly or indirectly and in the past or prospec-
15 tively, a description in accordance with subdivision four of this
16 section for:
17   (a) the same class of security tokens;
18   (b) a different class of security tokens created by the same develop-
19 er;
20   (c) the same or a different class of security tokens created by the
21 same developer and other consideration, whether a class of security
22 tokens or otherwise;
23   (d) a different class of security tokens that is intended to increase
24 in price in conjunction with the advertisement of the class of security
25 tokens advertised, whether or not such class of security tokens was
26 created by the same developer;
27   (e) a pre-public offering to purchase any of the security tokens
28 described in paragraphs (a) through (d) of this subdivision whether or
29 not such security tokens are actually purchased;
30   (f) a post-public offering to purchase any of the security tokens
31 described in paragraphs (a) through (d) of this subdivision for a
32 reduced price, whether or not such security tokens are actually
33 purchased; or
34   (g) a post-public notification of the existence of any of the security
35 tokens described in paragraphs (a) through (d) of this subdivision that
36 is intended to be prior to an anticipated influx of purchasers that will
37 raise the price of the security tokens, whether or not such security
38 tokens are actually purchased.
39   3. The advertiser shall have an affirmative duty to use reasonable
40 efforts to determine whether the class of security tokens paid to him or
41 her were created by the same developer and whether such security tokens
42 were intended to increase in price in conjunction with the advertisement
43 of the security token advertised.
44   4. The form of disclosure shall:
45   (a) be written on each advertisement in a sufficiently readable type-
46 face or, where such advertisement is auditory in nature, stated in a
47 clear and understandable tone prior to the auditory statement;
48   (b) in the case of the same security token advertised being paid in
49 consideration, a statement stating the exact amount of tokens provided,
50 the date that they were provided, and the type of token provided;
51   (c) in the case of a different security token created by the same
52 developer, a statement stating the exact amount of tokens provided, the
53 date that they were provided, the type of token provided, and a state-
54 ment that the security token provided was created by the same developer
55 as the security token being advertised;

 1   (d) in the case of the same or a different class of security tokens
 2   and other consideration, whether security tokens or otherwise, a state-
 3   ment stating the exact amount of tokens provided, the date that they
 4   were provided, the type of token provided, if the security token is
 5   different from the advertisement, a statement that the security token
 6   provided was created by the same developer as the security token being
 7   advertised, and a description of the other consideration provided howev-
 8   er that if such other consideration conforms to any of the provisions of
 9   subdivision two of this section, then a statement conforming with its
10   respective provision in this section;
11   (e) in the case of a different class of security tokens that is
12   intended to increase in price in conjunction with the advertisement of
13   the class of security tokens advertised, a statement stating the exact
14   amount of tokens provided, the date that they were provided, the type of
15   token provided, and a statement stating the security token that is
16   intended to increase in conjunction with the advertisement and that such
17   security token is intended by the developer to increase with the adver-
18   tisement of the security token being advertised;
19   (f) in the case of a pre-public offering to purchase any of the secu-
20   rity tokens described in paragraphs (a) through (d) of subdivision two
21   of this section, if an exact amount of security tokens are offered, a
22   statement stating the exact amount of security tokens offered, if an
23   unlimited amount of security tokens are offered, a statement stating
24   that the developer has offered the advertiser to purchase an unlimited
25   amount of tokens, and in either case, the date that the offering was
26   made, the date which the advertiser may purchase the security tokens at
27   the pre-public price and the type of token provided. The advertiser
28   shall be prohibited from disclosing or making public whether he or she
29   actually purchased the security token stated;
30   (g) in the case of a post-public offering to purchase any of the secu-
31   rity tokens described in paragraphs (a) through (d) of subdivision two
32   of this section for a reduced price, if an exact amount of security
33   tokens are offered, a statement stating the exact amount of security
34   tokens offered, if an unlimited amount of security tokens are offered, a
35   statement stating that the developer has offered the advertiser to
36   purchase a limitless amount of tokens, and in either case, the date that
37   the offering was made, the date which the advertiser may purchase the
38   security tokens at the reduced price and the type of token provided. The
39   advertiser shall be prohibited from disclosing or making public whether
40   he or she actually purchased the security token stated;
41   (h) in the case of a post-public notification of the existence of any
42   of the security tokens described in paragraphs (a) through (d) of subdi-
43   vision two of this section that is intended to be prior to an antic-
44   ipated influx of purchasers that will raise the price of the security
45   token, a statement stating the date that the advertiser was notified of
46   the existence of the security token, the approximate price of the secu-
47   rity token at the time of the notification, whether the advertiser actu-
48   ally purchased the security token, and, if the advertiser did in fact
49   purchase the security token, the amount that the advertiser purchased of
50   the security token and the amount purchased;
51   (i) in the case where such consideration is prospective and includes
52   any of the items required to be disclosed pursuant to subdivision two of
53   this section, a statement describing the method by which such consider-
54   ation will be paid prospectively, the type of account or other person or
55   entity in which such consideration is stored, if any, that it is being
56   held in, the date that such consideration will be released and the

1 **person or entity that such consideration will be released to, and a**
2 **statement satisfying the provision that such consideration conforms to;**
3 **and**
4   **(j) in the case of a combination of any of the foregoing provisions of**
5 **this subdivision, a statement satisfying each provision.**
6   § 2. This act shall take effect on the thirtieth day after it shall
7 have become a law. Effective immediately, the addition, amendment
8 and/or repeal of any rule or regulation necessary for the implementation
9 of this act on its effective date are authorized to be made and
10 completed on or before such effective date.